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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 374

BOB-LO EXCURSION COMPANY, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

FILED SEPTEMBER 26, 1947.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 6, 1947.

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[fols. 1-5] **IN SUPREME COURT OF MICHIGAN**

No. 43,302

Appeal from the Recorder's Court for the City of Detroit

Honorable John J. Maher, Recorder and Judge of the Recorder's Court

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff and Appellee,

v.

BOB-LO EXCURSION COMPANY, a Michigan Corporation, Defendant and Appellant

Record on Appeal

[fol. 6] IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

WARRANT

STATE OF MICHIGAN,
County of Wayne,
City of Detroit, ss:

To the Superintendent or any Captain, Lieutenant, Sergeant, Detective or Patrolman of the Metropolitan Police Force of the City of Detroit, in said County, Greeting:

Whereas, Sarah Ray hath this day made complaint to the undersigned Hon. John J. Maher a Judge of the Recorder's Court, of the City of Detroit, in said County, that heretofore, to-wit, on the 21st day of June, A. D. 1945, at the City of Detroit, in the County aforesaid,

Bob-Lo Excursion Company, a Michigan Corporation, being then and there an owner of a certain public conveyance on water, where refreshments are served, to-wit; the Bob-Lo Excursion Boat, there situated and docked at the Woodward Avenue Pier, did unlawfully then and there directly or indirectly, refuse, withhold, and deny to one Sarah Ray, a negress, certain accom-odations, facilities and privileges, thereof, in that the said Bob-Lo Excursion Company, a

Michigan Corporation, did then and there refuse passage and other accom-odations on account of the color of the said Sarah Ray, contrary to the form of the statute, etc.

Act No. 117 P. A. 1937, amending Sec. 146 Act No. 328 P. A. 1931. Contrary to the Form of the Statute, etc.

[fol. 7] And whereas, on examination, on oath, of said Complainant, by me, the said Judge of the Recorder's Court, it appears to me that said offense has been committed, and there is just cause to suspect the said accused party to have been guilty thereof; therefore,

In the Name of the People of the State of Michigan, You and each of you are hereby commanded forthwith to take the said accused party and him bring before the Recorder's Court, of the City of Detroit, at the Municipal Court Building, in the said City of Detroit, to be dealt with according to law.

Witness, The Hon. Paul E. Krause, Presiding Judge of the Recorder's Court of the City of Detroit.

Given under my hand and seal, at the City of Detroit, in said County, on the 11th day of July, A. D. 1945.

John J. Maher, Judge of the Recorder's Court of the City of Detroit.

[fol. 8] IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

Bill of Exceptions—Filed April 15, 1946

This cause came on to be heard on the 12th day of September, A. D. 1945, before the Honorable John J. Maher, Recorder and Judge of the Recorder's Court for the City of Detroit, at Detroit, Wayne County, Michigan.

APPEARANCES:

Gerald K. O'Brien, Prosecuting Attorney for Wayne County, and Joseph L. Bannigan, Assistant Prosecuting Attorney, for the People; Wilson W. Mills, for the defendant.

The defendant having formally waived a trial by jury, the case was tried before the Court without a jury.

RAY, SARAH ELIZABETH, called as a witness on behalf of the People, being first duly sworn testified as follows:

Direct examination.

By Mr. Bannigan:

My name is Sarah Elizabeth Ray and I live at 234 Eliot Street, Detroit, and I have been employed by the Detroit Ordnance District since last May. I have lived in Detroit for ten years. Previous to June 21, 1945, about forty girls, all classmates from Commerce High School, planned to take a trip to Bob-Lo Island. This trip was sponsored by the Detroit Ordnance District who conducted a class at said school. On the morning of June 21, only thirteen girls showed up at the foot of Woodward Avenue in Detroit to go on said trip. I was the only colored girl among them. [fol. 9] The other girls were white. When we arrived at the dock, we each paid eighty-five cents to Phyllis Walton, one of the girls in the group, to secure the boat tickets. She purchased the tickets and passed them around to the other twelve girls. I did not bother to read what was on my ticket.

The twelve white girls and I got on the boat together. On the way to the boat we passed through a gate. The ticket taker accepted my ticket. No one said anything to me while getting on the boat. We checked our coats,

went up on the top deck and sat down. We boarded the vessel Columbia for the trip to Bob-Lo Island, which is owned and operated by the Bob-Lo Excursion Company. Shortly afterwards two men, one dressed in uniform and one in plain clothes, came toward where we were sitting. We were not creating a disturbance at the time. They asked one of the white girls in our group, Rita Esper, sitting next to me if she knew me. The men were Mr. Robert E. Devereaux, assistant general manager of the Bob-Lo Excursion Company, and Mr. George Fox, a steward employed by said company.

Miss Reed, our teacher, asked these men what they wanted and they asked her if she knew me. They said I could not go along with the girls because I was colored. When I told my teacher they were discriminating against me, both Mr. Devereaux and Mr. Fox got angry and told me I would have to get off the boat. They stood over me and argued. My teacher got excited and I walked away because I was embarrassed. Mr. Devereaux and Mr. Fox yelled at me and said I was going in the wrong direction to leave the boat. I told them I was not leaving the boat and they ran and jumped in front of me. One of them called to three white men in white uniforms, waiters in the restaurant, [fol. 10] and told them "to throw this woman off," and they all closed in on me and got excited. I then told them I would leave the boat. Mr. Devereaux and Mr. Fox escorted me off the boat. Both of them told me I couldn't go on the boat because I was colored. While I was being led off the boat they told me I didn't have any right on the boat because it was a private concern and they could keep me off if they wanted to. They took me to the ticket office and offered to return my eighty-five cents back but I would not accept it. After I took the names of Mr. Devereaux and Mr. Fox, I left the premises of the Bob-Lo Excursion Company.

Cross examination.

By Mr. Mills:

I intended to disembark from the vessel at Bob-Lo and to have a picnic on the island.

Defendant hereupon introduced in evidence the tickets Exhibit A which was in the customary form of a two coupon ticket, one coupon for passage from Detroit to Bob-Lo and

the other coupon for passage from Bob-Lo to Detroit, and upon the reverse of each coupon appeared the wording "Right reserved to reject this ticket by refunding the purchase price."

Redirect examination.

By Mr. Bannigan:

I intended to have the boat take me to Bob-Lo Island. I am a negress, was born in Tennessee and have lived in Detroit for ten years.

Mr. Bannigan: That is the People's case.

[fol. 11] DEVEREAUX, ROBERT E., called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Mills:

My name is Robert Devereaux and I live at 106 E. Alexandrine, Detroit, and I am Assistant General Manager of the Bob-Lo Excursion Company, which was organized on December 13, 1939 as a Michigan Corporation for profit. Article II of the Articles of Incorporation (Exhibit B) is as follows:

"To lease, own and operate amusement parks in Canada, and to charter, lease, own and operate excursion steamers and ferry boats in interstate and foreign commerce, together with dock and terminal facilities pertaining thereto, and

"To buy, sell and dispose of all kinds of goods, wares, foods, beverages, merchandise, manufactures, commodities, supplies and products in connection therewith, and generally to engage in any for of enterprise necessary or convenient in connection with the aforesaid business of the company, and

"To lease, buy, sell, use, mortgage, improve and otherwise acquire, own, handle deal in and dispose of any and all property both real and personal, as may be necessary or convenient in connection with the aforesaid business of the company."

The only business in which the defendant has engaged in 1945 has been the operation of its steamships to Bob-Lo and the operation of Bob-Lo Island, excepting the defend- [fol. 12] ant has leased certain of its other docks to certain transportation companies for dockage privileges charging such transportation companies flat fee for each dockage. The defendant also leases a portion of its property at the foot of Woodward Avenue. Bob-Lo is the same island as Bois Blanc shown on maps and is an island in Canadian waters across from the town of Amherstburg, near the mouth of the Detroit River, and is a portion of the Province of Ontario, Dominion of Canada. The defendant has given up in 1928 the Belle Isle excursion business they had formerly and in which its predecessor was engaged. The Bob-Lo business to Bob-Lo Island is a seasonal business running in the summer months. The reason that Sarah Ray was refused passage was on account of her color. The defendant owns two vessels which it operates on the Bob-Lo run, —the Columbia and its sister ship the Ste. Claire. These vessels load at the defendant's docks in Detroit usually on the west side of Woodward Avenue at the Detroit River and both the dockage and adjoining landing property is owned by the defendant in fee. The defendant does not use Woodward Avenue, the passengers walk down the street. The ticket booths and so on all are on the defendant's property on the west side of Woodward Avenue. The defendant is successor by re-organization of the Detroit, Belle Isle and Windsor Ferry Company, the same company by re-organization. The defendant owns Bob-Lo Island in fee except a tract reserved for lighthouse purposes and three small cottage lots all of which are fenced off from the rest of the island by a five or six foot fence, and upon this property the defendant has erected a dining room, a cafeteria, dance hall, amusement buildings of various kinds, shelters and has laid out walks, drives, bicycle paths, bridle paths, roller skating rink, baseball and [fol. 13] other athletic grounds, bathing beaches and the like, and upon these it has expended upwards of $500,000.00. Five trips a day are usually made by the defendant during the season from its Detroit docks to Bob-Lo. These vessels each carry up to above 3,000 passengers. The vessel from which the complaining witness was asked to leave was the Columbia. The defendant caters largely to women and children and the defendant provides special policemen to

patrol the island to prevent all conduct and disturbance which would annoy patrons. The two vessels, the Columbia and the Ste. Claire, carry excursions of various churches, societies and organizations to the island selling tickets at reduced rate to such churches, societies and organizations which make a profit by reselling them at the regular rate, and the defendant's contracts with these churches, societies and organizations provide for different reduced rates to some than to others; in other words, the reduced rate is not uniform. During the seasons of 1944 and 1945 there were about 246 of such contracted excursions for each of said years from Detroit to the Island, and in some years the defendant will refuse a contract to a church, society or organization with which it had contracted the preceding year. In general the discount to such churches, societies or organization is based upon the number of members it will produce for the trip in question although sometimes the defendant grants higher discounts for fewer passengers than at other times which is dependent upon what the defendant considers to be sound business under the particular circumstances of each case. The defendant's charge for adults whom it carried to Bob-Lo in 1945 was .85¢ per round trip, except upon Sunday when its charge was $1.00 and also except Saturday nights when its charge was $1.25, including Federal Transportation tax. These charges were substantially the same as in the years [fol. 14] 1943 and 1944, although in 1943 there was a lower rate charged for Monday trips. All tickets issued to Bob-Lo during the year 1945 are in the same form as defendant's Exhibit A, sold at the Company's ticket offices, and tickets that are sold by organizations are a different size, but have the same stamp and all are priced the same, and they have the same wording as appears on the reverse of this ticket, i.e., "Right reserved to reject this ticket by refunding the purchase price." The defendant each year gives away several thousand passes to such persons it wishes. These vessels only carry passengers and they do not carry mail, freight or express. The defendant has no joint or through traffic rate with any railroad, steamship company, motor vehicle company, corporation or partnership. The defendant does not file any rate schedules or tariff with any authority whatsoever and it makes such rates as it sees fit. The total number of passengers carried upon both of these vessels in the year 1944 and the year 1945 were approxi-

mately 500,000. In 1944 the Columbia made 232 round trips and substantially the same number being made by the Ste. Claire, and in 1945 about the same number of trips were made by each vessel. The defendant adopted the policy of excluding so-called "Zoot-suiters," the rowdyish, the rough and the boisterous and it also adopted the policy of excluding colored. The defendant's vessels when they dock at the defendant's dock at Detroit, are always headed up-stream and as Bob-Lo is situated down-stream the vessels have to make, immediately upon leaving the dock, a large swing to the right and almost at once cross the international boundary and upon the run to Bob-Lo and return the international boundary is crossed four or five times each way and roughly half the run is in Canadian waters and the other half in American waters. These [fol. 15] two vessels are required by federal law to be enrolled by the United States Customs Service through the Collector of Customs at Detroit and the enrollment and license must be renewed annually. At the arrival of the vesels at Bob-Lo all passengers who land pass through the Canadian Customs and Canadian Immigration inspection. Upon the vessels returning from Bob-Lo to Detroit, there were formerly United States Customs and Immigration Inspectors at the Detroit dock, but with the advent of the war and the shortage of help, such inspection was dispensed with, and in its place the defendant was required to file a bond with the Treasury Department the condition of which was to indemnify the Government from any loss of revenue and expenses arising from any free importation of dutiable goods from Bob-Lo, and the defendant also has been required by the United States Immigration Service to furnish an agreement that it would not bring unauthorized aliens to Detroit from Bob-Lo or the mainland of Canada, and that the only persons which the defendant would carry from Bob-Lo to Detroit would be those persons whom in the first instance it had carried from Detroit to Bob-Lo. Periodically throughout the season a United States Immigration Inspector, under the jurisdiction of the Department of Justice, goes to the Island to inspect the manner in which it is policed so as to prevent persons entering the United States by way of the Island. There is no other means of access allowed to Bob-Lo Island except by the defendant's vessels. Annually the boilers, life preservers and all other equipment such as the hull, electrical system,

life boats and rafts and pumps on the defendant's vessels are examined by federal steamboat inspectors and if found satisfactory the steamboat inspectors pass the same and issue a permit to operate, which permit contains a limita-
[fol. 16] tion as to the number of passengers which each vessel may carry. The steamboat inspection service is under the jurisdiction of the Navy Department during 1945. The defendant likewise annually has to secure from the Dominion Government a somewhat similar license to operate the vessels, but during this war time, it is not strictly enforced. All water and milk served on the vessels is inspected by the Public Health Service of the United States Treasury Department. The defendant is required to make periodic customs reports to the United States Treasury, immigration reports to the Department of Justice, other reports to the United States Navy Department, to the United States Army Engineers and to the Department of National Health and Welfare of the Dominion Government, and these reports to Federal and Canadian authorities show amongst other things the number of passengers carried from Detroit to Bob-Lo and return and the number of round trips between Detroit and Bob-Lo for each vessel, and they disclose likewise the number of fire and life boat drills held on the vessels and give a written statement from the Master showing that all the vessel equipment is in satisfactory condition. This is required by the United States Inspection Service. The defendant is required to report to the United States Army Engineers in order to assist them in obtaining traffic information. At the beginning of each season it is required that defendant procure a United States customs clearance for each vessel to go to a foreign port. The Canadian customs requires that each vessel be entered once a day and a United States Clearance is presented to the Canadian authorities for this day and that ordinarily the defendant would have to make a United States Customs entry upon the return of each vessel, but [fol. 17] Federal regulations provide that if a vessel makes three or more of the same trips to a foreign port in a period of one week's time the vessel is not obliged to secure a clearance or be entered on each trip, so long as it makes at least three round trips a week to the same foreign port defendant may make monthly reports, in lieu of separate ones.

Mr. Mills: That is all.

Cross-examination.

By Mr. Bannigan:

On the 21st day of June last I was Assistant Manager of the Bob-Lo Company and had been for the past two and one half years. As Assistant Manager I was in control of operation of the concern on that date and I was then on the premises of the Company, i.e., both the premises on Woodward Avenue and also on the boat. I remember the complaining witness Sarah Ray. Mr. George Fox, the Steward of the Steamer Columbia was with me at the time. I told her she would have to get off the boat.

Q. Ordinarily are persons who are on the boat, are they passengers, that is, by paying the ticket and delivering up their ticket?

A. Ordinarily, yes. The ticket taker is located prior to getting on the vessel and it is taken for granted those on board have deposited a ticket. This lady was on the boat on the third deck, forward. Mr. Fox and I went to her and told her she would have to get off the boat.

Q. Did you tell her why?

A. I did not tell her why, I discussed it with the white people that she was with and I told them why she would have to get off the boat, that it was against our general policy to carry colored on our vessels. It was the general [fol. 18] policy on that date for the Bob-Lo Company not to carry colored passengers.

Mr. Mills: We will admit that defendant did not carry Miss Ray because she was colored.

Mr. Devereaux: The policy to exclude negroes has been in vogue for 21 years and may have been prior to that, and I know of no occasion where a negro got passage to Bob-Lo.

Q. Now you told Mr. Mills on direct examination that the boat company didn't use Woodward Avenue. How do people get to the premises of the Bob-Lo Boat Company?

A. Well, they step from Woodward Avenue on to our property.

Q. Then to get to the property of the boat company they have to use Woodward Avenue?

A. They use Woodward Avenue but we do not use it. The boat was docked on the Detroit River at our pier in the City of Detroit. The Bob-Lo Company advertises for

passengers in the three Detroit newspapers principally, and also uses street car advertising sometimes, but not the radio this year. The boat company is in the business of hauling people to Bob-Lo and back and providing recreation on the Island for them. The Bob-Lo Excursion Company, a Michigan corporation is the owner of Bob-Lo Island, they own it outright with the exception of four lots that are owned by others. It is the policy of the boat company to exclude negroes on those boats, to insure the continued success of the enterprise.

Q. Well now, do you sell beer on the boat?

A. On the evening trips.

Q. And who grants that license to sell beer?

A. We have a Federal Tax Stamp.

[fol. 19] Q. Are you licensed by the State of Michigan?

A. We have made application and received a license from the State of Michigan to sell beer.

Q. Have you received the same?

A. Yes.

Q. And the license is restricted to beer only, is that right?

A. Beer and wine, under 16%. Nothing was wrong with Sarah Ray except her being colored. There is nothing in our federal license or grant that makes it mandatory that we exclude negroes. Bob-Lo Island is part of the Dominion of Canada. There is no means of transportation from Amherstburg to the Island except what we provide, that is to our property and only to provide transportation to our own employees. There is no means of transportation from the other side,—that is the State of Michigan to the Island. When Miss Ray was ordered off the boat, she resented going off the boat and it was necessary to summon others than Mr. Fox to see that she did. We do not employ colored help on the boat with the exception of one colored cabin maid on one vessel. We have 52 employees on each vessel. In selling of tickets to these organizations and churches there is a clause in the contract excluding colored.

Re-direct examination.

By Mr. Mills:

Reference has been made to the use of Woodward Avenue. The pier from which the defendant loads is on the west side of Woodward Avenue and the only use made of Wood-

ward Avenue is the ordinary use of the public in walking down there. Tickets are purchased and entry is made on [fol. 20] the defendant's property and the boat is tied up on the defendant's property which is on the west side of Woodward Avenue.

Mr. Mills: I think that is all.

Mr. Bannigan: That is all. That is the People's case. We rest.

MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF

Mr. Mills: The defendant rests, and at this time I would like to move the court for a verdict or judgment of not guilty upon five grounds. (The five grounds are the same grounds as are set forth in the written motion for judgment of not guilty filed herein p. 24). A lengthy argument of law followed and thereupon the Court adjourned the matter until October 30th upon the Court asking the name of the Boat Company in the Meisner case which was Detroit, Belle Isle & Windsor Ferry Company, and Mr. Mills stating that the present defendant was its successor by reorganization.

The Court: Do the Bob-Lo Excursion Company boats make any stops between Detroit and Bob-Lo?

Mr. Devereaux: There's no stops made between Detroit and Bob-Lo on any days that we operate between Detroit and Bob-Lo. You understand there are times of the year our vessels don't operate from Detroit at all, they operate from Windsor to Bob-Lo and on all days where they operate from Detroit to Bob-Lo we do not make any stops between Detroit and Bob-Lo, with the exception of a few days where we pick up passengers at Wyandotte, Michigan, to go direct to Bob-Lo, and on this particular day, no stop was made between Detroit and Bob-Lo. On some days the Bob-Lo Excursion Company makes trips from Canadian ports like Windsor, to Bob-Lo and back to Windsor. No passengers are carried to or through the United States on those days.

Mr. Mills: We are prohibited from carrying passengers from Detroit to Bob-Lo on the days we carry them from [fol. 21] Windsor to Bob-Lo and that is on account of the Customs and Immigration.

(Adjournment.)

(On October 30, 1945 the Court reconvened with the same appearances.)

Mr. Mills: There are two motions pending before your Honor, one made verbally for a verdict and one in writing for a judgment, and they are on the same grounds, they are brought on the same grounds and the same issues as this case.

Thereupon the cause was adjourned until November 16th when Court reconvened with same appearances. The Court furnished counsel with and filed his written opinion denying defendant's motions for verdict and judgment of not guilty.

The Court: The motion for directed verdict of not guilty is denied and the defendant, the Bob-Lo Excursion Company, is found guilty as charged.

Mr. Mills (Interrupting): For the purpose of the record, I take it that your opinion has denied both of the motions I made, one for a verdict of not guilty and the other for a judgment of not guilty?

The Court: That is right. Let the record show that the Court, in the way of a sentence,—that the sentence is that the defendant company pay the sum of $25.00, the same to be listed on the file and in our records as costs. And I am informed that counsel for the defendant has a motion for a new trial here with him so I assume that you want a 20 day stay. There is a stay of 20 days.

(The court then adjourned and on November 30th reconvened with the same appearances.)

The Court: The Court does not want to change its ruling. The whole matter is a sufficiently close question that two good lawyers like you and Mr. Bannigan, who have worked [fol. 22] on the thing for sometime agree that it is a close question. Is that right, Mr. Bannigan?

Mr. Bannigan: That is true, your Honor.

The Court: I wrote an Opinion in harmony with my views. I may be a hundred per cent wrong. But it is such a matter that will cost very little to have it appealed because there is little or no record. I think the case is one that should be appealed and it probably will be.

Mr. Mills: It will be appealed.

The Court: And so let us have the Supreme Court decide this matter. It is not one of these hundred percent one way or hundred percent the other way cases. It is a close case.

Mr. Bannigan: That is true. I think both counsel and the Court have realized that all the way through, the issue is close.

Mr. Mills: I take it your Honor is denying my motion for a new trial on the grounds mentioned in your previous opinion?

The Court: That is right.

Mr. Mills: Then your Honor will give me the benefit of a twenty day stay of proceedings, on the record?

The Court: Yes. That is done right now, on the record.

[fol. 23] CERTIFICATE TO BILL OF EXCEPTIONS

I, John J. Maher, Recorder and Judge of the Recorder's Court for the city of Detroit, State of Michigan, hereby certify that the foregoing bill of exceptions, together with the exhibits therein mentioned, constitute the testimony taken and the proceedings had in said cause and the whole of the same; and that where either questions or answers appear therein, they are deemed necessary to a proper understanding of said cause and of the testimony therein, and that the foregoing reasons and grounds for appeal and assignments of error were attached to said bill of exceptions at the time of its settlement; and that the time for settling said bill of exceptions has by proper order been extended to and beyond the date hereof, and that after due notice, I have settled, signed, and certified the same on this 15th day of April, A. D. 1946.

John J. Maher, Recorder and Judge of the Recorder's Court for the City of Detroit.

O.K. as to form and substance: Andrew DeMaggio, Assistant Prosecuting Attorney.

[fol. 24] IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

MOTION FOR ENTRY OF JUDGMENT OF NOT GUILTY—Filed September 20, 1945

Upon the parties hereto each resting, defendant made an oral motion for a verdict of not guilty upon grounds therefor then orally stated. The defendant now moves for a judgment of not guilty upon the same grounds, to-wit:

. . . . . .

(2) That the said Michigan Civil Rights Statute is void as to defendant as being a purported state regulation of foreign commerce in violation of the commerce clause of the federal Constitution, to-wit: Article I Sec. 8, (3), thereof.

(3) That the said Michigan Civil Rights Statute is inapplicable as to defendant as being a purported state regulation of foreign commerce in violation of the commerce clause of the federal Constitution, to-wit: Article I Sec. 8, (3), thereof.

. . . . . .

[fols. 25-26] Respectfully submitted, Wilson W. Mills, Attorney for Defendant, 1712 Ford Building, Detroit 26, Michigan.

[fol. 27] IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

DECISION ON MOTION AND VERDICT—Filed November 16, 1945

Only one witness for each side testified at the trial, the complainant for the People and Mr. Devereaux for the defense. The complainant, Miss Sarah Ray, testified she was a negress and that on June 21, 1945 she was refused passage and other facilities and accommodations on the Bob-Lo Boat by the defendant company, although her fellow employees and companions—all of whom were of the Caucasian race were granted passage, privileges and accommodations on said boat by said Bob-Lo Excursion Company. Mr. Devereaux, an employee of said defendant company, agreed with complainant's testimony and also answered some questions from his own personal knowledge and some from exhibits—which were introduced—relative to the type of business or commerce of the defendant company, plus data on inspections, immigration, rates, etc.

On cross examination of Mr. Devereaux, it was shown that the Bob-Lo Excursion Company ran "ads" in the public press for business or rather passenger trade and that the tickets sold were what might be called "Round Trip Tickets." In short, the testimony was very brief, as counsel for each side more or less agreed to the facts in the case.

At the end of the People's case and again at the conclu-

sion of trial, the defendant, through its counsel, moved for a directed verdict of not guilty. Oral arguments were made and briefs filed and the matter stood adjourned until today for the Court's decision and verdict.

[fol. 28] In treating and considering this matter in its entirety, the Court has divided the same into six (6) divitions:

1. Statement of Facts
2. Statement of General Rules
3. Analysis of Cases in Defendant's 1st Brief
4. Analysis of Cases in Defendant's 2nd Brief
5. Questions involved—Answers—Authorities
6. Decision on Motion and Verdict

General Rules

Congress has exclusive plenary power under the Constitution to regulate our state and foreign commerce. However, the states still have police power within their borders to pass legislation, even although it may incidentally regulate, for state purposes only, their citizens, including also those citizens who accommodate the public for hire within state jurisdiction.

The navigable waters adjoining the state are within state jurisdiction and defendant is a Michigan corporation, and therefore, a Michigan citizen.

Defendant operates a public conveyance on water, since it operates a steamer, advertises pleasure cruises and fixes the price to the public. It is not a common carrier. It does not have *that* special relationship with the state, nor the special privileges of the common carrier.

Since defendant is a Michigan citizen operating to and from Michigan, it may not discriminate on the grounds of race or color when carrying passengers for hire to and from Detroit. If it does discriminate on either grounds, it [fol. 29] violates the Civil Rights Act. This defendant is charged with a violation of that act in Detroit.

Defendant claims, of course, that because it operates a pleasure park on an island owned by it, located in Canadian waters, and because to reach that island it must go partly through Canadian waters, that it is engaged in foreign commerce. The evidence does not show that the island is inhab-

ited except, perhaps, by some of the defendant's employees engaged in the operation of the amusement park. That park is operated entirely for defendant's benefit for profit. The steamer on which complainant was refused passage operates from defendant's wharf in Detroit through the Detroit River into Lake Erie and stops at Bob-Lo Island in Canadian waters. It stops nowhere else and it returns to Detroit. No one-way tickets are sold. Freight is not carried except such as may be used by defendants in operating their amusement park. It makes no other stops in Canada. Its advertisements hold it out as offering pleasure cruises, as well as the amusement to be had on Bob-Lo and not all passengers alight at Bob-Lo.

According to the brief, defendant has both United States and Federal Maritime licenses. It is subject to the regulations of the United States as regards the food and drinks served by it on the island. Apparently, there is no Canadian inspection. It reports to the United States Customs and Immigration Departments, as well as to the Canadian. It is subject to the United States regulation as regards its equipment on the steamer. Apparently, the Canadian regulations have to do merely with preventing uninspected importation or immigration for which this defendant has no license.

[fol. 30] As a carrier of passengers, defendant is subject to direct regulation by Congress whether under the Interstate Commerce Commission, the Maritime Commission, The Federal Shipping Act, or similar Federal regulation.

The Interstate Commerce Act, while directed to the business of common carriers only, expressly insists upon prohibition of discriminations of any type. That prohibition is broad enough to forbid discrimination on the grounds of color, as the Mitchell case cited by defendant affirmatively shows. By its terms, the Interstate Commerce Act includes commerce with an adjacent foreign nation originating in the United States.

Of course, Congress has no regulatory power over foreign commerce, except by treaty, or except such as originates in the United States or ends there or both. If it does originate and end within the United States, Congress' power is clear, even although part of the trip may be through foreign territory or over foreign waters. A state has no jurisdiction beyond its borders. Michigan's jurisdiction includes the navigable waters adjoining Michigan

to the center line. Of course, Michigan does have jurisdiction over offenses committed in Detroit.

Conveyance by water which starts from Detroit, goes through American and Canadian waters to an island in Canadian waters, owned and operated by defendant, said conveyance carrying passengers who buy only round trip tickets in Detroit to go and return and carries no other passengers, even though it allows temporary disembarkation at the passenger's election on the island in Canadian waters, is not, I think, engaged in foreign commerce.

[fol. 31] Transportation is commerce, but transportation to and from Detroit with the temporary stop-over is not, the Court thinks, foreign commerce. If the amusement is commerce, it is not foreign commerce, even though on foreign soil, unless it includes some type of inter-course or exchange with a foreign nation. This intercourse or exchange on Bob-Lo is controlled by American citizens and involves no foreign inter-course.

Moreover, the Civil Rights Statute of Michigan is not an attempt by our state to regulate directly either Interstate or Foreign Commerce, even though it may incidentally affect some Michigan citizens who engage in such commerce. It follows that even if we assume that defendant's business is, as it claims, foreign commerce, it is still subject to state regulation under the state police power for acts committed in the state. If the statute does affect such citizens' commerce incidentally, it still does not contravene the plenary right of Congress to regulate.

The rule is well settled that if Congress does regulate in a given field of commerce, the state's police power may not regulate in the same field. The commerce clause was intended to give Congress exclusive power in fields where a single authority is indicated. However, where Congress does not or has not regulated, the state may regulate within its own jurisdiction even though the regulation directly affects commerce, unless there has been some Congressional indication that in that particular field of commerce Congress desired commerce to be wholly untrammeled.

That situation, of course, does not here exist. Every regulation of commerce controlling either Interstate or Foreign Commerce and emanating from the Congress has been declaratory against discrimination. Clearly, there-

[fol. 32] fore, it must be inferred that Congress does not

desire *any* type of commerce to indulge in race discrimination.

It is true that a state exercises of police power whether aimed directly at commerce or not, will not be held valid if it imposes an additional and unreasonable burden on either Interstate or Foreign Commerce. Assuming, though not admitting that defendant is engaged in commerce at all, other than transportation, still the statute imposes no burden upon defendant. The Civil Rights Statute forbids discrimination but it makes no mandatory provision. If the defendant should desire to outfit its steamer with separate equal accommodations for whites and colored and it is engaged in foreign commerce, such an outfitting would, under the decisions, be valid as far as Federal supervision is concerned. However, our statute does not burden defendant with the requirement that it must so segregate. It merely lays down the rule that defendant may not discriminate against citizens of Michigan or residents of Michigan, either on the score of race or color.

An analysis of all decisions cited by defendant reveals no support for defendant's contention that the Michigan Statute contravenes Congressional power over foreign commerce. The only case which appears to so hold is Pryce v. Swedish-American Lines, 30 Fed. Supp. 371. However, that case is:

1. Not a decision by an Appellate Court.

2. Is based squarely upon the decision of Hall v. DeCuir, 95 U. S. 485, where the La. Statute was held as constitutional

because:

[fol. 33] a. Expressly said by the La. Supreme Court to operate interstate.

b. Was expressly found by the U. S. Supreme Court to burden commerce.

Our Civil Rights Statute claims no extra territorial jurisdiction and asks to impose no burden.

Analysis of Defendant's Citations

Cases in First Brief

It should be noted that throughout the brief defendant uses, interchangeably, the terms "public conveyance" and "common carrier." They are not the same. This defendant is a public conveyance and a carrier but not a common carrier.

1. Public Utilities v. Duke, 266 U. S. 577.

This was a case where the United States Supreme Court held a Michigan statute to be unconstitutional because: First, it was a direct regulation of interstate commerce. Second, it imposed a direct burden by forcing upon all carriers, who used Michigan highways, the liabilities of common carriers.

Defendant Duke was a citizen of Ohio, who operated freight trucks and had three contracts to carry furniture from Ohio to Michigan. The act declared unconstitutional would have compelled him to live up to the duties of a common carrier, although he did not have the special privileges of such a carrier, such as eminent domain. The Supreme Court said that a private carrier could not be made a common carrier by legislative fiat.

2. Meisner v. Ferry Company, 154 Michigan 545.

[fol. 34] In that case, the defendant was the predecessor of the defendant in the instant case. It was sued for discrimination in refusing to carry plaintiff. This was not a discrimination for race or color and, therefore, the earlier version of the Civil Rights statute, then in effect, could not have been invoked. The theory of the suit was that as defendant was a carrier, it could not pick and choose passengers in the absence of misconduct. This was the law of common carriers at common law. However, the Supreme Court held that defendant was not a common carrier, it did not have the special privileges of a common carrier and could select the passengers it chose to carry. The decision pointed out that defendant was as much a private business as theatre or a race course. This is significant because the Civil Rights Statute penalizes discrimination on the part of theatres and race courses, as well as conveyances, if the discrimination is based on race or color.

In the Meisner case, there was no discussion of whether or not the defendant was a public conveyance. The only distinction drawn was between common carrier and private carrier. Many private carriers are public conveyances if they hold themselves out to the public for hire.

That decision throws no light whatsoever on the question in the instant case.

Defendant cites cases to prove that criminal statutes must be strictly construed and also that state courts are bound by the decision of the United States Court on Federal constitutional questions. Those cases will not be discussed, since those *principles* are conceded.

[fol. 35] 3. Hall v. DeCuir, 95 U. S. 485.

This was an appeal from a decision of the La. Supreme Court, affirming a judgment for damages in favor of Mrs. DeCuir, a colored woman who had taken passage on defendant's steamer plying the Mississippi River between points in Louisiana and in adjoining states also. She was refused entry to the cabin reserved for white persons, although she was offered accommodations in the negro section, which she refused. The Louisiana statute prohibited carriers from discriminating on the score of race or color. It was a direct regulation of commerce, therefore, and the La. Supreme Court in its decision stated that the statute was broad enough to apply to interstate commerce. Mrs. DeCuir had recovered damages and the owners of the steamer appealed.

The United States Supreme Court said that they must accept the holding of the Louisiana Supreme Court; that the statute was intended to have interstate effect. This, they said, was to contravene the power of Congress to regulate commerce interstate. They also pointed out that this regulation, besides being interstate, would impose a burden upon commerce because two of the adjoining states had statutes which required carriers to segregate whites and colored. They said that the steamer might have to have accommodations for whites and colored elsewhere if it passed through the waters of the Mississippi, for example, and when the steamer reached Louisiana, it would be compelled to change the system and mingle the two; and then, perhaps, at the next stop, segregate them again in another state, which would be burdensome.

On the score, then, that it was a direct and deliberate regulation of interstate commerce and that it imposed a burden upon commerce, they held the statute unconstitutional.

[fol. 36] The distinction between that case and the instant case is clear. Our Civil Rights Statute is not a direct regulation of commerce. It is only incidental. Moreover, our Court does not claim that the statute has extra-territorial effect or applies to interstate commerce directly.

The DeCuir decision reflects the earlier Federal decisions which attempted to meet the southern problem arising under the 14th Amendment. Technically, the decision is correct, but inapplicable here.

4. Mitchell v. United States, 313 U. S. 80.

Mitchell, a colored Congressman, took passage for an interstate journey starting in Illinois and including, among other states, Arkansas. He paid a first class passage but at the Arkansas border, he was compelled to transfer to a second class cabin, because Arkansas had a law requiring carriers in the state to segregate white and colored. He was offered a refund on his ticket, which he refused. He made complaint to the Interstate Commerce Commission that the railroad was discriminating. The Commission held a hearing at which was shown that very few colored persons demanded first class passage. It was also shown by the testimony that the first and second carriages differed. Actually, second class accommodations were greatly inferior in a number of respects. The Commission ruled that in view of the circumstances, the discrimination was not unreasonable. Mitchell appealed to the United States Supreme Court which reversed the Commission's finding, holding that the discrimination forbidden in the Interstate Commerce Commission Act included color discrimination. That such discrimination was unreasonable. That while Arkansas had a right to demand segregation, that did not relieve the railroad from the duty to avoid discrimination by offering equal accommodations to persons of both colors. [fol. 37] The statute was not, as defendant's brief alleges, held void. It was conceded that the state had the power to make such a statute, but that it could not affect interstate commerce so as to negative the Interstate Commerce Act which prohibited discrimination.

In the case at bar, if defendant is really engaged in foreign commerce, as it claims, and if the same rule applies under the Act, which it probably does, then consistently with the Mitchell decision, this Court should find that the Civil Rights Act is valid as affecting such commerce, but that it cannot affect it so as to require the carrier to refuse the passenger equal accommodations. In other words, Congress has forbidden common carriers to refuse equal accommodations in interstate commerce or in a commerce to the United States to a foreign or adjacent country, or from such a country to the United States. The Supreme Court has ruled that they may segregate in the states which so require so long as accommodations are equal. This, of course, does not license carriers to refuse *all* accommodations. Insofar as it is applicable at all, the Mitchell decision refutes defendant's contention, since under it Congress has gone on record as demanding equality of accommodations and as branding denial thereof as discriminatory, both in state and interstate commerce.

Since, however, the Interstate Commerce Act attempts regulation only of common carriers, the case is applicable only by analogy. However, it also shows affirmatively that Congress does not desire all commerce under its control to be so untrammeled that it may indulge in racial discrimination.

It is unfortunate that since defendant is not a common carrier, this complainant cannot have recourse to the same procedure adopted by Mitchell under the Interstate Com-[fol. 38] merce Act. She cannot, however, because that Act expressly applies only to common carriers.

In passing, the Court remarks that statutes, such as Arkansas and some other states, mostly southern, have passed, would be held unconstitutional in Michigan as Michigan decisions hereinafter discussed affirmatively show.

5. Edwards v. California, 314 U. S. 116.

This involves a California statute which attempted to discriminate against indigent persons seeking to enter the state and made it a penal offense to assist in such entry. Defendant Edwards brought his brother-in-law from Texas into California by car. The evidence showed that the brother-in-law was indigent within the meaning of the Cali-

fornia statute and Edwards was found guilty. He appealed and his conviction was reversed by the United States Supreme Court on the score that the California Act was an unconstitutional barrier to commerce and, therefore, not a valid exercise of the state police power. The Supreme Court in its discussion expressly recognized that a state statute exercising police power in a matter of local concern is valid, even though it may thereby affect interstate commerce (Syll. 2).

Justice Byrnes wrote the opinion. Justices Douglas, Black and Murphy, while concurring in the result, preferred to place the decision on the grounds that the statute violated the 14th Amendment and declined to find it a violation of the commerce clause. Justice Jackson, in a third concurring opinion, expressly repudiated the commerce clause reason.

The California regulation was expressly aimed at interstate transportation. It had no other purpose. It also expressly denied the rights of national citizenship. Under [fol. 39] either viewpoint, the decision was correct but offers no support to defendant's position in the instant case. In our case, the Statute only incidentally touches upon commerce outside the state and it does not deny to any citizen the equal protection of the laws.

6. Pryce v. Swedish-American Lines, 30 Federal Supplement 371.

This was decided in 1930 but never carried to any Appellate Court, so that it is in no sense authority.

Mrs. Pryce, a colored American citizen of New York, bought a ticket to South America on defendant's line and was later refused accommodation expressly because she was colored. She made a complaint in New York under that state's Civil Rights statute, which is quite similar to our own. It was transferred to a lower Federal Court, apparently, a Maritime Court, presumably because of diversity of citizenship. Without any discussion, the Court declared the statute could not apply to defendant, expressly resting its decision on the case of Hall v. DeCuir, supra.

Since the New York State Supreme Court had not claimed extra-territorial effect for its statute and since it was not shown that it had imposed an additional burden upon the defendant to accept Mrs. Pryce, the Hall-DeCuir

decision was not authority in such a decision for the Pryce decision. No other reason was given. In this Court's opinion, an appeal to the United States Supreme Court, or even to the Circuit Court of Appeals, would have resulted in reversal. In any case, the decision of such a court is in no sense binding. If it were, then a common carrier operating from a point in the United States to a foreign or adjacent country, the defendant would have been under the supervision of the Interstate Commerce Commission and [fol. 40] would have been held guilty of unreasonable discrimination, as was the defendant in the Mitchell case.

Defendant, in his brief on page four, contends that the effect of these citations is to prove that Congress only has power to regulate foreign and interstate commerce and that its failure to act is equivalent to a declaration by Congress that commerce in that field shall be unregulated. However, that is not the effect of these citations. It is true that Congress under the Constitution is given power to regulate interstate and foreign commerce. It is further true, as the decisions point out, that if Congress fails to regulate in any particular field, there are two possible results:

1. Its failure may be held to indicate a desire by Congress that in such a field, commerce is to be unhampered or it may indicate that Congress in that field desires to leave regulation to the states under their police power.

In a situation where Congress, in every recorded regulation of commerce so far as it has regulated, has forbidden the very thing that Michigan statute forbids, namely, racial and color discrimination, but where Congress has applied its ruling only to common carriers, it cannot logically be argued that Congress desires other types of commerce to be free to so discriminate. Inferentially, at least, Congress has left to the state police power to regulate against discrimination in commerce.

The difficulty, of course, with the decisions is that they do not necessarily each arise in the same way and no one considers all the points which may be raised in another, wherein circumstances are similar. In citing decisions, therefore, it is safest to first analyze them from both viewpoints.

[fol. 41] For example, Hall v. De Cuir would say that Louisiana had gone beyond its police power in attempting

to directly regulate commerce. They said so because the Louisiana Court had said so and had said that the Act had extra territorial effect. However, in our Michigan case, there is no such direct regulation of commerce and no claim that the Act regulates interstate commerce either.

2. The Duke case again decides only that a state statute may not so regular- interstate carriers using Michigan highways as to make them assume the burden of being common carriers when they are not.

The Mitchell case simply shows that Congress, by regulation, forbids discrimination and that that regulation requires carriers, subject to the Act, to furnish equal accommodations. As a result, if the carrier, as that one did, passes through a state where the state law requires segregation by color, the carrier must segregate but must still offer equal accommodations. That case does not decide whether or not the Arkansas statute is unconstitutional.

The Meisner case, on which the defendant relies so heavily, has no reference to commerce at all, while the Edwards case is a state attempt to directly prohibit one type of interstate commerce.

Defendant cites further cases where state statutes enacted under the police power were held to be unconstitutional as attempts to regulate interstate commerce. All those applicable were direct regulations of interstate commerce; none cited were statutes forbidding discrimination under penalty within a state, of carriers who might also operate beyond the state lines.

7. Defendant cites Gloucester Ferry Company v. Pennsylvania, 114 U. S. 96.

[fol. 42] This proves that transportation is commerce, which is admitted and that it requests uniformity of regulation, which, second statement, is only partly true. In that case, defendant operated a ferry, carrying freight and passengers from a point in New Jersey to Pennsylvania and vice versa. It was a New Jersey corporation and operated on the Delaware River between the two states, owned a dock in New Jersey and leased one in Philadelphia. It owned no property in Philadelphia except the lease and its ships stopped there only long enough to discharge and take on passengers and freight.

Pennsylvania attempted to tax the entire corporate stock of defendant, holding that it was doing business in Pennsyl-

vania, but the United States Court held that its business was in interstate commerce and so not taxable by the state where it held no property, except that the lease could be taxed.

"Commerce among the states" the Court said "consists of intercourse and traffic between *their citizens* and includes the transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities." • • • "Congress alone therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by state regulation. Otherwise, *there would be no protection* against conflicting regulations of different states, each legislating in favor of its own citizens and products and against those of other states." Clearly, then, the basis of that decision and of the decisions which hold state statutes to be burdensome was the danger of conflicting regulations, if any but Congress could legislate, a danger arising when each state tried to favor its own. Clearly, the type of police regulation in the case at bar does not fall within that purview, since there is no danger [fol. 43] to be apprehended from conflicting jurisdictions. Canada can regulate defendant only to prevent violations of the customs or the immigration laws. It cannot require segregation nor compel defendant to refuse passengers because of color. The decision in the Gloucester Ferry case, then, does not go so far as to prevent a state from exercising its police power in its own territory, to prevent color discrimination, even although the defendant is engaged in foreign commerce and intends when it leaves Michigan to go in foreign waters.

It should be pointed out, too, that in the Gloucester Ferry case, passengers were landed on both sides of the river and embarked from both sides and freight came from both sides so that it was truely interstate. This defendant, however, carries only passengers from Detroit and the same passengers back to Detroit, and it does not land in any Canadian port as part of the trip. It is not, we think, commerce at all, or if it is, it is not foreign commerce.

8. Railway v. Covington, 235 U. S. 537.

This was held to be a direct regulation of interstate commerce, and was also held to be unreasonable and burdensome. The regulation was a statute of Kentucky regulating

the operation of straight course which ran over a bridge from Covington, Kentucky to Cincinnati, Ohio which bridge had been held in a prior decision to be an instrument of interstate commerce. Single fares were collected, some to start in Kentucky and others to start in Ohio. In deciding that it was interstate commerce, the Court point- out expressly that the test of interstate or state (character), is to be derived from what is actually done and from inquiring whether transportation is really and in fact between the [fol. 44] states. This case is important as emphasizing the difference between state and interstate transportation. They based the interstate decision on the fact of one-way fares. Defendant's fares are all two-way, originating and ending in Michigan.

9. South Carolina v. Branwell Brothers, 306 U. S. 177.

Cited by defendant, this decision perfectly supports the validity of the Michigan Civil Rights Act and definitely denies the correctness of the defendant's position.

A United States District Court, at the request of Branwell Brothers, which was an interstate trucking company, had enjoined the State of South Carolina from enforcing a state statute, which prohibited the use, on state highways, of motor trucks weighing more than twenty thousand pounds. This applied to all trucks, including interstate trucks. However, the United States Supreme Court reversed the District Court hold- that the statute was reasonable and not a violation of the commerce clause.

The District Court had said that it was burdensome on traffic which would normally go through South Carolina and, therefore, was an unreasonable regulation of commerce interstate. The Supreme Court answered that Congress had not undertaken to regulate said interstate traffic; that the object of the regulation was to improve intrastate commissions and was not *discriminatory* against other states; that it has always been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress.

[fol. 45] So, Michigan, as well as South Carolina, has a right to regulate its places of public accommodation, even though this results, incidentally, in the regulation of defendant, who claims to be engaged partially in foreign commerce.

Here is no attempt to discriminate between citizens and non-citizens, because defendant is a Michigan citizen. This is merely a state regulation on a local matter. On this point, because of their number and diversity, Congress has not tried to regulate all carriers—only common carriers—by regulating common carriers against color discrimination. However, Congress has indicated that it does not consider such regulation a burden and does not desire to leave the field of foreign commerce free. Clearly, then, our regulation is valid because:

a. It is reasonable.

b. It is not burdensome.

c. It affects outside commerce, if at all, only instantly.

d. It is in accord with the Congressional viewpoint against color discrimination.

10. The Minnesota Rate Case, 230 U. S. 352.

These cases held affirmatively that "Congressional non-action on the subject leaves each state free to establish maximum intrastate rates for interstate carriers, which are reasonable, even though these may require readjustment at state boundaries, certainly that decision offers defendant no support.

11. Kansas Gas Company v. Kansas, 265 U. S. 298.

Defendant corporation was engaged in piping gas, originating in Oklahoma and in Kansas, in pipes through the State of Kansas to Missouri and in selling to distributors [fol. 46] in both Kansas and Missouri. The Kansas Public Utility Commission attempted to fix the rates *to* which defendant could sell. However, the Supreme Court held that the business was purely interstate, but that Kansas could fix the rate for distributors to sell in Kansas, but could not govern an interstate carrier selling in Kansas to distributors. This, they held, would be a direct burden and purely interstate comerce. The Court can see no benefit to defendant by this decision.

Finally, defendant cites its own case in the Wayne Circuit Court, No. 219803 in Chancery. The Circuit Court is, of course, a Court only of concurrent jurisdiction with the Court and the decision, whatever it was, is in no sense binding.

Defendant's last assertion in his brief that a corporation as a citizen has the same rights as an individual is not disputed, but not here involved, so the Court passes the citations offered by the defendant on this point.

ANALYSIS OF DEFENDANT'S SECOND BRIEF

I. Defendant repeats it reliance upon the Meisner case, which is here inapplicable. Defendant also again insists that because it is not a common carrier it is not a public conveyance. However, it does offer public accom-odations for hire and that is the test, not the type of ownership or the type of a corporation.

Defendant also insists that because the statute reads "public conveyance on land and water" and because defendant only operates on water, the statute does not apply. Michigan decisions have repeatedly held that the words "and" and "or" may be either conjunctive or disjunctive and that the test is intent. One such decision is Elliott vs. Market, 286 Mich. 112, where the Court construing the [fol. 47] statute on bulk sales held that "or" should be read "and." There is, of course, the further rule that a statute must not be so interpreted as to become absurd. The wording of this statute goes back to 1866 to a Federal statute from which it was copied. It has been enforced in Michigan since 1875. At that time, amphibian planes had not been invented. Our attention has been called to no other type of conveyance, both on land and water.

II. Whether or not defendant is engaged in foreign commerce is, at least doubtful. However, if it is, it cannot escape every type of state regulation, incidental or even direct, so long as the regulation is reasonable, not burdensome, and does not encroach upon Congressional powers.

The real test of foreign comerce is whether or not there is, in fact, traffic or intercourse with foreign nations. Another test is the location of the termini. Both are in Michigan.

Defendant's business is transportation plus amusement. Whether the passengers stay on board or get off at Bob-Lo, they still make no contacts with citizens of Canada, have no trade with them—the traffic or trade, if amusement, is traffic—only with defendant. However, assuming that this is foreign commerce, the statute is still applicable. It is in a field not covered by Congress but it is the type of

statute which Congress has approved in other cases by disapproving discrimination.

The offense committed by defendant was committed in Michigan and completed there. It is not a continuing offense. The offense consisted of the violation of a reasonable statute. Defendant asks "What in God's World" does [fol. 48] the Michigan Civil Rights statute seek? The Court answers "It seeks to see that all of God's children have equal rights in Michigan."

III. Defendant refers to 109 U. S. 3, following:

The so-called Civil Rights cases, wherein the Supreme Court held the first two sections of the 1866 version of the Federal Civil Rights Statute to be unconstitutional. They so held, because they said that the constitution was the only source of Congressional legislative power. All else was reserved to the states. They said that the 14th Amendment did not give Congress power to legislate against discrimination, but merely to protect those against whom the states discriminated. They did say that Congress could legislate on that subject to regulate commerce. Congress has so legislated in the Interstate Commerce Act, but only as to common carriers. For the rest, the legislation job is still that of the states. Michigan performed that job when it passed its Civil Rights Act.

The Court agrees with defendant that dissenting opinions are not controlling, although they sometimes become majority opinions at a later time; as witness, for example, Child Labor Legislation and minimum wages. It is necessary to read each decision in the light of the conditions at the time and it is necessary to be sure on what grounds a decision rests. In citing both the Hall and the Edwards cases, defendant forgot to do just that. However, defendant cannot deny that our Michigan Supreme Court in Bolden vs. Operating Company, 239 Mich. 318, has held that the Civil Rights Statute is not lack of due process under the Federal 14th Amendment. That case cites Ferguson vs. Gies, 82 Mich. 358, my reading of which would form an excellent background to the case at bar. The court adds, [fol. 49] also, that the United States Supreme Court has so decided in numerous decisions; among them, Snowden vs. Hughes, 321 U. S. 1.

QUESTIONS INVOLVED

Question 1. Should a Michigan citizen, who claims to engage partly in foreign commerce, be wholly free from state regulation.

Answer 1: a. Defendant says yes.

b. Plaintiff says no.

c. The Court thinks the answer is no, provided that such regulations are not a direct burden or do not encroach on Congressional regulation. If they are a valid exercise of police power, affecting outside commerce only incidentally, we believe that anyone in Michigan must obey them or suffer the consequences. South Carolina vs. Branwall Brothers, 303 U. S. 177; Cooley vs. Post Wardens, 12 How. 299, 13 L. Ed. 996. The type of legislative regulation forbidden most of the states must constitute a direct and substantial interference with commerce. U.S.F. & G. vs. Ky., 231 U. S. 394; Boston etc. Rule v. Ambrey, 285 U. S. 234; California vs. Thompson, 313 U. S. 109, 113.

Question 2: Is defendant engaged in foreign commerce?

Answer 2: a. Defendant says yes.

b. Plaintiff says no.

c. The Court's answer is "could be."

Transportation is commerce, but defendant's transportation begins and ends in Michigan though it does go through foreign waters. There is no traffic with foreign nations. [fol. 50] Whether or not that is foreign commerce is questionable.

A decision in each case on whether or not it is interstate or foreign commerce depends on the circumstances of the case. In one Federal case, Covington vs. Kentucky, for example, it was decided that a street car running across a bridge between Kentucky and Missouri was engaged in interstate commerce, because one-way tickets were sold at either end. Here, only roundtrip tickets are sold and must be purchased in Michigan.

Also, in New York Ex. Rel. Cornall vs. Sohmes, Controller, 235 U. S. 548, it was held that a tax on the gross earnings of a steamship can be imposed, but the state of New York was not so burdensome as to encroach on Con-

gressional power when the evidence showed that the only interstate commerce in which the Company indulged was daily trips across the Hudson to New Jersey to pick up tow boats. Every steamer picked up a tow in New Jersey but no one landed there. The termini were all in New York.

Question 3: Assuming that defendant *is* engaged in foreign commerce, has Congress regulated such commerce by allowing or forbidding discrimination on the grounds of race or color to all engaged in such commerce?

Answer 3: Not as far as the Court can discover and defendant cites no such regulation.

Congress, by the Federal Motor Carrier Act, the Maritime Shipping Act and the Interstate Commerce Act, has forbidden unreasonable discrimination to common carriers, whether they are engaged in interstate commerce or in commerce between the United States and an adjacent foreign [fol. 51] country. It has not regulated other carriers on this subject.

The Court does not think that that can be taken to mean that Congress indicates it wishes all other commerce, except by common carrier, to be free to discriminate. On the contrary, we are certain that it means that Congress is always against discrimination but leaves the more local problems to local authorities, even though, incidentally, the regulations may have extra territorial effect.

Question 4: Is the Civil Rights Regulation reasonable?

Answer 4: a. Plaintiff says yes.

b. Defendant says no.

c. The Court thinks that it is reasonable and is in line with all Michigan decisions since the Civil War, as well as the dec-sion of the United States Supreme Court, including the Mitchell case. It is not out of line with any decision.

Question 5: Is the regulation burdensome?

Answer 5: a. Plaintiff says no.

b. Defendant says yes (I assume).

c. The Court feels that it is not burdensome. It is intended to govern intra-state commerce, incidentally, and is reasonable, even though interstate or foreign is effected. The Supreme Court of the United States in Louisville Rail-

road vs. Mississippi, 133 U. S. 589, has upheld a state statute regulating carriers in Mississippi and compelling segregation. This was held not to be burdensome. If it is not burdensome to compel a type of discrimination, it is cer- [fol. 52] tainly not burdensome to compel a citizen to refrain from that type or any type. Defendant will not have to make any change in equipment or any operation in order to obey the statute. All it will have to do, is to treat all citizens and persons, white or colored, alike. No Canadian treaty could interfere with the rights of American citizens against such discrimination. There is no possibility, then, of conflicting authority, which is the basis for calling some regulations burdensome.

Question 6: Does the Civil Rights Statute encroach upon the power of Congress?

Answer 6: a. Plaintiff says no.

b. Defendant says yes.

c. The Court thinks the answer is no. As far as Congress has acted, it has affirmed the theory of the Michigan statute. It has not acted beyond regulating common carriers, except in the passage of the present Federal Civil Rights Act which guarantees "to all persons within the United States, the same right * * * to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." In view of that discrimination, it cannot be said that Congress wishes commerce to be free to discriminate. The Court adds that white citizens are permitted to use defendant's steamers.

Decision on Motion and Verdict

The Court concludes that even if defendant *is* engaged in a very attenuated form of foreign commerce, which is not certain, still the Michigan regulation is valid and applies.

[fol. 53] While the defendant engages in no traffic or intercourse with the citizens of foreign nations and while it sells only round-trip tickets from and to Michigan and deals only with passengers taken on there, still, because it traverses Canadian navigable waters, let us assume it does *some* foreign commerce.

Still, the Civil Rights Statute applies. That statute does *not directly* regulate commerce, except as commerce is one

form of "public accom-odation." It claims no extra territorial effect; though, incidentally, one doing commerce in foreign waters may be affected while in Michigan.

The statute is valid under all decisions. It is a valid exercise of police power. The offense penalized is committed in Michigan. It is not burdensome at all. Defendant would need to make no change, except in policy, to obey it. It regulates one engaged in foreign commerce only incidentally.

It does not encroach on Congressional power over commerce. Congress has only attempted to regulate *common carriers* so as to forbid discrimination.

That leaves the field open to the States to regulate commerce at home against discrimination, even though it may incidentally affect outside commerce.

Congress has indicated its opposition to color discrimination as unreasonable, by common carriers. Certainly that affirmative regulation does not mean that it wishes all the rest of commerce to be free to discriminate unreasonably.

The statute is not a State attempt to favor its own citizens at the expense of other nations and states.

[fols. 54-62] The motion for a directed verdict of not guilty is denied and the defendant (Bob-Lo Excursion Company) is found guilty as charged.

(Signed) John J. Maher, Recorder and Judge.

Dated: November 16, 1945.

[fol. 63] In the Recorder's Court for the City of Detroit

Reasons and Grounds for Appeal and Assignments of Error—Filed April 15, 1946

Now comes the defendant, Bob-Lo Excursion Company by its attorney, Wilson W. Mills, and sets forth the following assignments of error and reasons and grounds for appeal to the Supreme Court of Michigan in this case:

* * * * * * *

3. Because the Court erred in not holding that the said Michigan Civil Rights Statute is void as being a purported state regulation of foreign commerce in violation of the commerce clause of the Constitution of the United States,

to-wit: Article I Sec. 8, (3), thereof, the defendant being engaged in such foreign commerce.

[fol. 64-67] 4. Because the Court erred in not holding that the said Michigan Civil Rights Statute is inapplicable as to defendant as being a purported state regulation of foreign commerce in violation of the commerce clause of the Constitution of the United States, to-wit: Article I Sec. 8, (3), thereof, the defendant being engaged in such foreign commerce.

* * * * * * *

7. Because the Court erred in denying defendant's motion for a verdict of not guilty.

8. Because the Court erred in denying defendant's motion for a judgment of not guilty.

Wilson W. Mills, Attorney for Defendant.

[fol. 68] IN SUPREME COURT OF MICHIGAN

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff and Appellee

v.

BOB-LO EXCURSION COMPANY, a Michigan Corporation, Defendant and Appellant.

OPINION—Filed April 17, 1947

Before the Entire Bench

NORTH, *J.*:

The Bob-Lo Excursion Company, a Michigan corporation, having waived trial by jury was tried in the recorder's court of Detroit and found guilty of having violated the so-called civil rights statute of Michigan (Act No. 117, Pub. Acts 1937; Stat. Ann. 1946 Cum. Supp. § 28.343). From its conviction defendant has appealed.

Defendant admits that in June 1945 its agents compelled a negro girl, the complaining witness herein, to disembark from one of its ships at the wharf in Detroit and denied her accommodations on its ship solely because she was a colored

person. She was tendered repayment of the purchase price of her ticket. For its discriminatory action in refusing passage to the negro girl defendant was prosecuted and convicted under the cited Act. The pertinent portion of the statute reads:

"Sec. 146. All persons within the jurisdiction of this state shall be entitled to full and equal accommodations, advantages, facilities and privileges of * * * public conveyances on land and water * * * and all other places of public accommodation, amusement, and recreation, where refreshments are or may hereafter be served, subject only to the conditions and limitations established by law and applicable alike to all citizens and to all citizens alike, with uniform prices."

Among the various purposes for which defendant was incorporated are; "To lease, own and operate amusement [fol. 69] parks in Canada, and to charter, lease, own and operate excursion steamers and ferry boats in interstate and foreign commerce, together with dock and terminal facilities pertaining thereto." Decision herein presents the question as to whether defendant is engaged in foreign commerce. Defendant asserts that it is so engaged and in consequence thereof defendant claims that the quoted statute is not applicable and that defendant's conviction thereunder was unlawful.

1945 defendant's business was chiefly devoted to transportation of passengers to and from Bob-Lo Island (also known as Bois Blanc) and the operation of facilities for recreation and amusement owned by it on Bob-Lo Island. Except for four lots this Island is owned by defendant. It is a part of the Province of Ontario, Dominion of Canada. Only defendant's ships have access to Bob-Lo Island. Ordinarily these ships make round trips between Detroit and the Island, but occasionally they also make round trips between Windsor, Ontario, and Bob-Lo Island. But defendant does not transport passengers from Canada to Michigan. In traveling between Detroit and the Island defendant's ships cross the international boundary line several times and are in Canadian waters for about a half of the voyage. Defendant's ships are required by federal law to be enrolled by the United States Customs Service, and the enrollment license must be renewed annually. Defendant's commerce activities and ships are subject to regulations

and inspection by the United States Treasury, the United States Immigration Service, the United States Navy Department and the United States Army Engineers. Its ships are also regulated by similar governmental agencies of the Dominion of Canada.

In the case of Gibbons v. Ogden, 9 Wheaton 1, 190 and 195, Chief Justice Marshall speaking for the Supreme Court of the United States, said:

[fol. 70] "All America understands, and has uniformly understood, the word 'commerce,' to comprehend navigation. * * *

"But in regulating commerce with foreign nations, the power of congress does not stop at the jurisdictional lines of the several states. It would be a very useless power, if it could not pass those lines. The commerce of the United States with foreign nations, is that of the whole United States."

In the case of Lord v. Steamship Co., 102 U. S. 541, the Supreme Court said:

"The single question presented by the assignment of errors is, whether Congress has power to regulate the liability of the owners of vessels navigating the high seas, but engaged only in the transportation of goods and passengers between ports and places in the same State. It is conceded that while the Ventura carried goods from place to place in California, her voyages were always ocean voyages."

The question was resolved as follows:

"Commerce includes intercourse, navigation, and not traffic alone. * * *

"The Pacific Ocean belongs to no one nation, but is the common property of all. When, therefore, the Ventura went out from San Francisco or San Diego on her several voyages, she entered on a navigation which was necessarily connected with other nations. While on the ocean her national character only was recognized, and she was subject to such laws as the commercial nations of the world had, by usage or otherwise, agreed on for the government of the vehicles of commerce occupying this common property of all mankind. She was navigating among the vessels of other nations and was treated by them as belonging to the coun-

try whose flag she carried. True, she was not trading with them; but she was navigating with them, and consequently with them was engaged in commerce. If in her navigation she inflicted a wrong on another country, the United States, and not the State of California, must answer for what was done. In every just sense, therefore, she was, while on the ocean, *engaged in commerce with* foreign nations, and as such she and the business in which she was engaged were subject to the regulating power of Congress."

In view of the holdings in Gibbons v. Ogden, and Lord v. Steamship Co., supra, and of like holdings in many other cases which might be cited, it must be held in the instant case that the defendant is engaged in foreign commerce. And in the light of that determination decision must be made as to whether the so-called civil rights statute of Michigan, above cited, is valid or at least whether it is applicable to defendant under the facts and circumstances of the instant case. And in turn decision of that issue hinges on whether [fol. 71] the cited Michigan civil rights statute imposes an unreasonable burden on foreign commerce. Since by the Federal Constitution the power to regulate both foreign and interstate commerce is vested in Congress*, due consideration must be given to pertinent decisions of the Supreme Court of the United States. We have so held as to interstate commerce, and that holding is equally applicable to foreign commerce.

"The power given congress by the United States Constitution to regulate commerce among the several States is exclusive, and the decisions of the United States Supreme Court upon that question are controlling." (Syllabus) People v. White, 197 Mich. 263.

Many cases hold that state legislation which unduly burdens interstate or foreign commerce is invalid, even where Congress has not acted. Such is the holding in the very recent decision of the United States Supreme Court in Morgan v. Commonwealth of Virginia, U. S. ; 66

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*U. S. Const., Art. I, § 8.

"The Congress shall have Power . . .

(3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

S. Ct. Rep. 1050. As stated in the headnotes in that case, the court held:

"State legislation or a final court order materially affecting interstate commerce is invalid, even where Congress has not acted.

"Where Congress has not acted, a state may validly enact legislation affecting interstate commerce, where the legislation has predominantly only a local influence on the course of interstate commerce.

"State legislation is invalid if it unduly burdens interstate commerce in matters where uniformity is necessary in the constitutional sense of useful in accomplishing a permitted purpose.

"Because the Constitution puts the ultimate power to regulate interstate commerce in Congress, rather than in the states, the degree of state legislation's interference with that commerce may be weighed by federal courts to determine whether the burden makes the state statute unconstitutional."

[fol. 72] We have given careful consideration to the various decisions upon which defendant relies, particularly Hall v. DeCuir, 95 U. S. 485; Pryce v. Swedish-American Lines, 30 Fed. Supp. 371; Henderson v. New York, 92 U. S. 259; and Board of Trustees v. United States, 289 U. S. 48. However, we are of the opinion that each of the above cases either by reason of the factual background or the legal issue involved must be distinguished from the instant case. In the Hall-Decuir case, the court based decision upon the assumption that by reason of traversing the waters of various states and stopping at ports in such states the carrier might meet with statutory requirements of various types, and with which the Louisiana statute might be in conflict and compliance with both would be quite impossible. Under such circumstances the court held invalid the Louisiana statute which required "those engaged in inter-state commerce to give all persons travelling in that State, upon the public conveyance employed in such business, equal rights and privileges in all parts of the conveyance, without distinction or discrimination on account of race or color." Obviously the carrier in the instant case is not in its business confronted with the circumstances which led the court in the Hall-DeCuir case to hold that the Louisiana statute

imposed an undue burden upon interstate commerce. In the instant case it quite conclusively appears that defendant in carrying on its commerce or transportation will not be subjected to an undue burden arising from conflicting regulations by being required to render its services alike to both white and colored persons.

Pryce v. Swedish-American Lines, supra, is not a decision of a court of last resort and the court seems to have rather summarily based its decision, so far as its application to the instant case is concerned, upon the holding in Hall v. DeCuir, just above considered. Decisions in Henderson v. [fol. 73] New York, supra, and Board of Trustees v. United States, supra, are not particularly applicable to the instant case. Neither involved discrimination based on race or color. In effect the Henderson decision was merely that a state is without power to impose unreasonable requirements or a tax upon foreign commerce. And the holding in Board of Trustees v. United States was merely to the effect that "States and their instrumentalities" are not "relieved of the duties on articles imported by them" in foreign commerce.

The decisions cited by defendant are not controlling of the instant case unless it appears that the Michigan civil rights act imposes an undue burden on the foreign commerce in which defendant is engaged. That issue is material to decision the instant case. But we are of the opinion that holding the provisions of the Michigan statute effective and applicable in the instant case results only in this, defendant will be required in operating its ships as "public conveyances" to accept as passengers persons of the negro race indiscriminately with others. Our review of this record does not disclose that such a requirement will impose any undue burden on defendant in its business in foreign commerce. As applied to the facts in the instant case the Michigan civil rights statute is neither in derogation of or in conflict with pertinent federal regulations. Instead the mandate of the Michigan statute is in accord with the federal civil rights act, which contains the following:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit

of all laws and proceedings for the security of persons and property as is enjoyed by white citizens * * *." R. S. § 1977; U.S.C.A., Title 1, § 41.

While literally the provision of the interstate commerce act about to be noted applies to common carriers, nonetheless it is indicative of the character of federal regulations [fol. 74] in this field of the law. The interstate commerce act prohibits common carriers from subjecting any person "to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." See paragraph 1, § 3 of the interstate commerce act, U.S.C.A., Title 49. Referring to the above provision the United States Supreme Court has said:

> "Paragraph 1 of §3 of the Act says explicitly that it shall be unlawful for any common carrier subject to the Act 'to subject any particular person * * * to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.' 49 U.S.C. 3. From the inception of its administration the Interstate Commerce Commission has recognized the applicability of this provision to discrimination against colored passengers because of their race and the duty of carriers to provide equality of treatment with respect to transportation facilities; that is, that colored persons who buy first-class tickets must be furnished with accommodations equal in comforts and conveniences to those afforded to first-class white passengers." Mitchell v. United States, 313 U. S. 80, 95.

There is no escape from the conclusion that defendant herein is engaged in the business of operating "public conveyances" by water, and the Michigan statute provides: "All persons within the jurisdiction of this state shall be entitled to full and equal accommodations" afforded by such conveyances. The Michigan enactment has been held constitutional. Bolden v. Operating Corporation, 239 Mich. 318. Our conclusion is not only that the Michigan civil rights act is constitutional but that it is applicable to the business carried on by defendant; and further that it does not impose an undue burden on defendant's commerce activities.

In arriving at the above conclusion we are mindful of our decision in Meisner v. Detroit, Belle Isle & Windsor

Ferry Co., 154 Mich. 545, wherein the present defendant's corporate predecessor was defendant. It was there held that the defendant engaged in the same business activities as defendant in the instant case, "is not, as to the enterprise named, a common carrier, and it may refuse to carry to [fol. 75] such park anyone at its pleasure." But the holding in the cited case is not controlling in the instant case because the former decision turned solely on the holding that the defendant therein was not a common carrier. The report of the Meisner decision states: "The action is in tort, alleging a breach of defendant's duty *as a common carrier* of passengers." It does not appear in the Meisner case that plaintiff asserted a right under the Michigan civil rights statute; whereas in the case at bar that statute is of controlling importance. In the instant case decision is not controlled by defendant's being or not being a common carrier. Whatever its classification in that respect may be, it unequivocally appears from the record that it operates "public conveyances on * * * water" and that such operations have their inception in this State, wherein the statute provides all persons within the jurisdiction of the State shall be entitled to full and equal accommodations of such public conveyances. It is not amiss to note that one may be engaged in interstate or foreign commerce notwithstanding he is not a common carrier. An example of such a status is found in the operators of trucks who are contract carriers. But such carriers upon crossing State lines become engaged in interstate commerce, and upon crossing National lines become engaged in foreign commerce. Nonetheless they are not common carriers. Michigan Public Utilities Commission v. Duke, 266 U. S. 570.

The law of interstate commerce, but applicable alike to foreign commerce, in the light of which the instant case must be decided, with numerous supporting citations, is stated in 15 C. J. 5, 268, as follows:

> "However, the constitutional grant to Congress of power to regulate interstate commerce, although operating of its own force to curtail state power in some measure, does not forestall all state action affecting interstate commerce; it does not withdraw from the states power to legislate in respect of their local concerns, even though such legislation may indirectly and incidentally affect interstate commerce. Although state

legislation affects interstate commerce incidentally, indirectly, or remotely, yet where it does not undertake [fol. 76] to regulate such commerce and is no more than a bona fide, legitimate, and reasonable exercise of the reserved police power of the state in respect of a matter of local or internal concern, it is valid and * * * will stand, in the absence of conflicting and superseding legislation by Congress in the exercise of its superior authority to regulate commerce among the states."

The decision of the lower court is affirmed.

Signed: Walter H. North, John R. Dethmers, Neil E. Reid, Edward M. Sharpe, Henry M. Butzel, Leland W. Carr, George E. Bushnell, Emerson R. Boyles.

[File endorsement omitted]

[fol. 77] IN THE SUPREME COURT OF MICHIGAN

43302

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,

vs.

BOB-LO EXCURSION COMPANY, Defendant

JUDGMENT—April 17, 1947

The record and proceedings in this cause having been brought to this Court by appeal from the Recorder's Court of the City of Detroit, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Recorder's Court of the City of Detroit, there is NO ERROR. Therefore it is ordered and adjudged that the judgment of said Recorder's Court of the City of Detroit be and the same is hereby in all things affirmed.

[fol. 78] IN SUPREME COURT OF MICHIGAN

[Title omitted]

APPLICATION FOR REHEARING—Filed May 6, 1947

Now comes the above defendant and respectfully moves the court for a rehearing herein for the following reasons: (1) The opinion of this court handed down April 17, 1947 misconstrued the parallel facts of the controlling case, viz., *Hall v. DeCuir*, 95 U. S. 485 and the case at bar, and consequently the Michigan Civil Rights statute contravenes the commerce clause of the federal constitution—Article I, Sec. 8, (3) when applied to this defendant in its foreign [fol. 79] commerce: and (2) the opinion of this court may have assumed the federal equal rights act applying to interstate railroads also applies to purely water carriers in interstate or foreign commerce.

Respectfully submitted, Wilson W. Mills, Counsel for Defendant, 1712 Ford Building, Detroit 26, Michigan.

[fol. 80] BRIEF IN SUPPORT OF APPLICATION FOR REHEARING

As stated in the court's opinion, defendant being engaged in foreign commerce this court is controlled by the decisions of the Supreme Court of the United States upon that question. They are binding on this Court. *People v. White*, 197 Mich. 283; *Smart v. Florida, etc. Ry.*, 240 Mich. 542.

I

The controlling opinion of the federal Supreme Court is *Hall v. DeCuir*, 95 U. S. 485. It has consistently been followed by that court for seventy years, the last such occasion being June 1946. It is very respectfully submitted this court erred in its opinion as to the parallel facts and law therein and herein. No two cases could be more similar. In DeCuir the fact was the vessel operated on the Mississippi River, in the case at bar on the Detroit River (as pointed out in DeCuir and in defendant's original brief both rivers and their connecting waters carry enormous traffic, and each serve as boundaries to some ten states and/or foreign countries): In DeCuir the vessel's maximum total run was between New Orleans, Louisiana, and Vicksburg,

Mississippi, *it being impossible for that vessel on its total run to be in waters of more than two states,* in the case at bar total run is between Michigan and Ontario—but note this added factor, part of the run and one terminus is in Canada, a foreign country, which important fact was not present in DeCuir: In DeCuir the vessel might have been [fol. 81] subject to regulation by two states (but only one had assumed to act), in the case at bar one state has acted, but one province and a foreign country have a right to so act. The stricken Louisiana statute was for all practical purposes identical with the Michigan Act. How then can it be said that in DeCuir "The court based decision upon the assumption that by reason of traversing the waters of various states * * * the carrier might meet with statutory requirements of various types, and with which the Louisiana statute might be in conflict and compliance with both would be quite impossible," *and not say precisely the same as to the case at bar?* Defendant here is confronted with an identical burden, a similar statute, the identical possibility of Ontario and/or Canadian contrary regulation which existed from the state of Mississippi in the DeCuir case, but to a somewhat greater extent here because Ontario or Canada may lawfully regulate traffic on her waters and her island—while therein Mississippi could not constitutionally do so. Again how may it be said in the absence of gazing into a crystal globe that this "defendant in carrying on its commerce or transportation will not be subjected to an undue burden arising from conflicting regulations." Louisiana had its statute like Michigan—Mississippi had passed no contradictory regulation—the mere *possibility* that Mississippi *might* do so was a causation leading to the invalidation of the Louisiana statute. So likewise here, the province of Ontario or the Dominion of Canada may, indeed *it has the right* (which Mississippi did not have constitutionally) to make valid regulations in utter conflict with Michigan's statute.

The Court's opinion indicates a greater burden existed on interstate commerce in DeCuir than in the case before us. It is respectfully submitted this is not the case, for the Louisiana and Michigan statutes are practically identical; [fol. 82] in DeCuir the vessel's total run was only between only two states, and in our case between one country and another. A New York statute was stricken which gave no greater burden, *Pryce v. Swedish American Line,* 30 Fed.

Supp. 371. So too in *Morgan v. Virginia*, 66 Supreme Court Reporter 1050, the only burden was that contiguous bus seats be not occupied at the same time by persons of different races. There all the carrier would have had to do would be to re-seat its passengers (if even that became necessary) upon crossing the Virginia line. But even this was held to be an undue and unconstitutional burden. One of the opinions in the Morgan case states moreover the result would be to make the Michigan statute inoperative as applied to interstate commerce (p. 14 of opinion).

II

This court on page 7 of its opinion quotes from *Mitchell v. U. S.*, 313 U. S. 80. Fearing this court might have been led to the belief the federal statute there involved covered water carriers, defendant points out that the Mitchell case involved an interstate *railroad* for which type of carrier Congress has passed its own civil rights act. Congress has also so regulated interstate passenger common carriers by water if they have a joint tariff with a railroad, but it is admitted by counsel that Congress has not passed any such regulation for interstate water passenger carriers as defendant (it having no joint tariff, etc.) nor for interstate passenger motor vehicles, and for such water carriers, and for such motor carriers the Supreme Court of the United States has held (in the DeCuir case for vessels and in the Morgan case for motor vehicles) that lack of regulation by Congress is a declaration that they be kept free of such state regula-[fols. 83-84] tion, and consequently any such attempted state regulation is invalid.

This Court's opinion states the Michigan Statute "is in accord with the Federal Civil Rights Act." The two statutes are most dissimilar as to the matters sought to be regulated, the Federal act covering political rights alone, the State act other matters. The writer has been unable to locate any Congressional Civil Rights Act similar to the Michigan statute applying even to the District of Columbia. On the contrary there is an act applying to the District under which white and colored children may not attend the same public schools.

Respectfully submitted, Wilson W. Mills, Counsel for Defendant, 1712 Ford Building, Detroit 26, Michigan.

[fol. 85] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—June 12, 1947

A motion for rehearing having been heretofore submitted herein, it is hereby denied.

[fol. 86] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 87] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES

To the Honorable Stanley F. Reed, Associate Justice of the Supreme Court of the United States:

Now comes Bob-Lo Excursion Company, petitioner, defendant and appellant and represents:

I

That on April 17, 1947 the Supreme Court of the State of Michigan affirmed the conviction of defendant upon the matters hereinafter mentioned, and thereafter in due season defendant applied for a rehearing, which was denied by said Court on June 12, 1947.

II

This action before the Supreme Court of the State of Michigan was upon appeal by the defendant to review its conviction and the levying of a fine against it, which conviction was had and fine was imposed by the Recorder's Court for the City of Detroit, Michigan. The offense of which defendant was found guilty was an alleged violation of the "Civil Rights" Statute of Michigan, Act 117, P. A. 1937, Stat. Ann. 1946 Cum. Supp. Sec. 28.343.

III

Petitioner Bob-Lo Excursion Company is a corporation organized and existing under the laws of the State of Michigan and as stated in the opinion of the Supreme Court of Michigan, 317 Mich. 686, its "business was chiefly devoted to transportation of passengers to and from Bob-Lo Island (also known as Bois Blanc) and the operation of facilities for recreation and amusement owned by it on Bob-Lo Island. Except for four lots this Island is owned by defendant. It is a part of the Province of Ontario, Dominion of Canada. Only Defendant's ships have access to Bob-Lo Island. Ordinarily these ships make round trips between Detroit and the Island, but occasionally they also make round trips between Windsor, Ontario, and Bob-Lo Island, but defendant does not transport passengers from Canada to Michigan. In traveling between Detroit and the Island defendant's ships cross the international boundary line several times and are in Canadian waters for about a half of the voyage. Defendant's ships are required by federal law to be enrolled by the United States Customs Service, and the enrollment license must be renewed annually. Defendant's [fol. 88] commerce activities and ships are subject to regulations and inspection by the United States Treasury, the United States Immigration Service, the United States Navy Department and the United States Army Engineers. Its ships are also regulated by similar governmental agencies of the Dominion of Canada." In June 1945 defendant refused to transport a negro girl upon one of its vessels from its dock at Detroit, Michigan, to Bob-Lo Island, Ontario, Canada, because she was a colored person. She was tendered repayment of the purchase price of her ticket which she refused. For defendant's refusal of passage as aforesaid to the said negro girl defendant was prosecuted convicted and fined under the provisions of the above mentioned Civil Rights Act.

IV

In said cause there was drawn in question the validity of a statute of the State of Michigan, viz: the above mentioned "Civil Rights" Act, on the grounds of it being repugnant to the Constitution, laws or treaties of the United States and the decision was in favor of its validity. Petitioner claims the said Michigan "Civil Rights" Act is invalid or at least

may not be constitutionally applied to defendant under the facts and circumstances of the instant case for the reason that in either case the said Act would

(a) constitute an undue and unconstitutional regulation by the State of Michigan of the foreign commerce being engaged in by appellant in violation of Article I, Sec. 8, Clause 3, of the Constitution of the United States; and

(b) result in depriving defendant and appellant of its property without due process of law and depriving defendant and appellant of the equal protection of the laws in violation of sec. 1 of the 14th Amendment to the Constitution of the United States; and

(c) the effect of the decision of the Supreme Court of Michigan herein is to convert defendant from a private carrier to a common carrier or to a public conveyance by water, thus depriving defendant and appellant of its property without due process of law and depriving it of the equal protection of the laws all in violation of sec. 1 of the 14th Amendment to the Constitution of the United States.

V

Petitioner claims the said Michigan "Civil Rights" Act so far as it applied to it in its business as aforesaid is unconstitutional in that it is an improper interference with and regulation of foreign commerce by the state of Michigan and thereby violates the power of Congress to regulate foreign commerce as provided in Article I, Sec. 8, Clause 3 of the Constitution of the United States; and likewise that said Civil Rights Act is unconstitutional in that it deprives petitioner of its property and deprives it of the equal protection of the laws both as guaranteed to it by sec. 1 of the 14th Amendment to the Constitution of the United States.

[fol. 89]

VI

Petitioner claims that the said "Civil Rights" Act contravenes Article I, Sec. 8, (3) of the Constitution of the United States and contravenes Sec. 1 of the 14th Amendment of the Constitution of the United States. These claims were raised and over ruled in the Recorder's Court for the City of Detroit, that being the Court of first instance, and thereafter

in an appeal to the Supreme Court of the State of Michigan defendant and appellant filed the same claims and contentions for an appeal and as its reasons and grounds for the said appeal and assignments of error, and said questions were brought and raised before the Supreme Court of Michigan in the manner and form required under the practice of said Court, and which satisfied all of the requirements; and certain of the said federal questions were necessarily considered at length by the said Supreme Court of the State of Michigan; and all of said contentions and objections of defendant and appellant were expressly over ruled in the opinion rendered by the said Supreme Court of Michigan, and in the judgment entered thereon.

VII

Your petitioner further avers that in the last aforesaid judgment and proceedings certain errors were committed to the prejudice of your petitioner all of which more fully apear from the assignment of errors which is filed herewith.

Wherefore, petitioner prays for the allowance of an appeal from the Supreme Court of the State of Michigan, the highest court of said State, to the Supreme Court of the United States in order that the decision of the Supreme Court of the State of Michigan may be examined and reversed. It also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Michigan, may be sent to the Supreme Court of the United States as provided by law. It also prays the appeal act as a supersedeas, and for an order touching the security to be required of it and the approval thereof.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

Wilson W. Mills, Attorney for Petitioner Defendant and Appellant, Bob-Lo Excursion Company, 1712 Ford Building, Detroit 26, Michigan.

[fol. 90] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS

The said Bob-Lo Excursion Company, defendant and appellant, assigns the following errors in the record and proceedings in the said case:

1. The Supreme Court of the State of Michigan erred in its decision and judgment in holding the Michigan "Civil Rights" Act as amended, (Act 117, P.A. 1937; sec. 17115-146, 7 Mason's 1940 Cumulative Supplement; Stat. Ann. 1946 Cum. Supp. Sec. 28.343,4) was valid and in holding the same was applicable to defendant when engaged in foreign commerce, on account of the provisions of Art. I, Sec. 8, (3) of the Constitution of the United States, under which the said Michigan "Civil Rights" Act is either unconstitutional or at least may not constitutionally be applied to defendant when engaged in such foreign commerce, and which decision is hereby assigned as error.

2. The Supreme Court of the State of Michigan erred in its decision and judgment in holding that the aforesaid Michigan "Civil Rights" Act as amended was valid and enforcible as against this defendant when engaged in foreign commerce, in that under Article I, Sec. 8 (3) of the Constitution of the United States, such foreign commerce may not be regulated by the State of Michigan but is solely under the jurisdiction of the Congress of the United States, and the said Supreme Court of Michigan erred in not holding said Act may not constitutionally be applied to defendant when engaged in foreign commerce, or in not holding said act was invalid under said provision of the Constitution of the United States if so applied, and which decision is hereby assigned as error.

[fol. 91] For which errors defendant and appellant prays that the said judgment of the Supreme Court of the State of Michigan dated April 17, 1947 and on which application for rehearing was denied on June 12, 1947 in the above entitled cause be reversed and a judgment rendered in favor of the said defendant and appellant.

Dated Aug. 18, 1947.

Wilson W. Mills, Counsel for Appellant, 1712 Ford Building, Detroit 26, Michigan.

[fol. 92] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—August 21, 1947

The petition of defendant and appellant herein for an appeal in the above cause to the Supreme Court of the United States from the Supreme Court of the State of Michigan, and the assignment of errors, and statement disclosing basis of appellate jurisdiction upon appeal as required by United States Supreme Court Rule #12, being filed therewith, and the record of said cause having been considered, it is

Ordered that an appeal be and is allowed to the Supreme Court of the United States from the Supreme Court of the State of Michigan, as prayed in said petition, and that the clerk of the Supreme Court of the State of Michigan shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within thirty-five days from the date hereof.

It is further ordered that said defendant and appellant shall give good and sufficient security in the sum of Five Hundred Dollars ($500.00), that said appellant shall prosecute said apeal to effect, and if said appellant fails to make his plea good, he shall answer all damages and costs.

The said appellant now presenting a bond in the sum of Five Hundred Dollars ($500.00), it is

Ordered that the same be, and is hereby, approved.

The appeal shall operate as a supersedeas.

Stanley Reed, Associate Justice of the Supreme Court of the United States.

Dated: August 21, 1947.

[fol. 93] Citation in usual form omitted in printing.

[fols. 94-96] Supersedeas and Cost Bond on Appeal for $500.00 approved Aug. 21, 1947 omitted in printing.

[fol. 97] IN SUPREME COURT OF MICHIGAN

[Title omitted]

PRAECIPE OF DEFENDANT AND APPELLANT INDICATING PORTIONS OF RECORD TO BE INCORPORATED INTO TRANSCRIPT OF RECORD

To Jay Mertz, Esq., Clerk, Supreme Court of Michigan:

SIR:

Pursuant to Rule 10, paragraph 2, Revised Rules of the Supreme Court of the United States the undersigned on behalf of defendant and appellant herein hereby indicates that the following portions of the record herein *is* to be incorporated into the transcript and forwarded (prior to the return date of the citation filed herein) to the Clerk of the Supreme Court of the United States under your hand and the seal of the Supreme Court of Michigan, to wit:

1. Warrant.
2. Bill of Exceptions.
3. Motion for entry of Judgment of not guilty.
4. Motion for Verdict of not guilty.
5. Motion for New Trial.
6. Decision on Motion and Verdict i.e., (Opinion of trial court).
7. Order permitting appeal to Supreme Court of Michigan.
8. Reasons and grounds for Appeal to Supreme Court of Michigan and Assignment of Errors.
9. Opinion of Supreme Court of Michigan.
10. Judgment of Supreme Court of Michigan (Dated April 17, 1947).
11. Application for Rehearing.
12. Order denying Application for Rehearing (Dated June 12, 1947).
13. Petition for Appeal to Supreme Court United States.
14. Order Allowing Appeal.
15. Assignment of Errors.
16. Citation.
17. Supersedeas and Cost Bond.
18. Statement disclosing basis of appellate jurisdiction upon appeal.

19. Statement directing attention to the provisions of Rule 12, paragraph 3 Revised Rules of the Supreme Court of the United States.

[fol. 98] 20. Acknowledgment by Appellee of service of papers on appeal to Supreme Court of the United States.

21. This Praecipe and acknowledgment of service thereof.

Yours, etc., Wilson W. Mills, Attorney for Defendant and Appellant, 1712 Ford Building, Detroit 26, Michigan.

I hereby acknowledge service upon me of a copy of the above praecipe this 27th day of August, 1947.

James N. McNally, By Herbert Burdick, Attorney for Plaintiff & Appellee and Prosecuting Attorney Wayne County, Michigan.

Proof of Service

STATE OF MICHIGAN,
County of Wayne, ss:

Vera Broeg being duly sworn deposes and says she is employed by Wilson W. Mills, attorney for defendant herein and that on August 27, 1947 she served a true copy of Praecipe of defendant and appellant indicating portions of record to be incorporated into transcript of record, upon the Attorney General of Michigan by handing said true copy to Ben H. Cole, Assistant Attorney General of the State of Michigan.

Further deponent saith not.

Vera Broeg.

Subscribed and sworn to before me this 27th day of August, A. D. 1947. Roy H. Lockwood, Notary Public, Wayne County, Michigan. My commission expires Aug. 5, 1950. (Seal.)

[fol. 99] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 100] UNITED STATES OF AMERICA

SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS INTENDED TO BE RELIED UPON BY APPELLANT AND PARTS OF RECORD TO BE PRINTED PURSUANT TO RULE 13, PARAGRAPH 9, REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES; TOGETHER WITH PROOF OF SERVICE OF SAME—Filed October 3, 1947

Bob-Lo Excursion Company, a Michigan corporation, defendant and appellant, in pursuance of Rule 13, Paragraph 9 Revised Rules of the Supreme Court of the United States, does hereby state that in the appeal it intends to rely upon the points of law set forth in paragraphs 1 and 2 of its Assignment of Errors filed in this court and cause, to wit:

I

The Supreme Court of the State of Michigan erred in its decision and judgment in holding the Michigan "Civil Rights" Act as amended, (Act 117, P. A. 1937; sec. 17115-146, 7 Mason's 1940 Cumulative Supplement; Stat. Ann. 1946 Cum. Supp. Sec. 28.343, 4) was valid and in holding the same was applicable to defendant when engaged in foreign commerce, on account of the provisions of Art. I, Sec. 8 (3) of the Constitution of the United States, under which the said Michigan "Civil Rights" Act is either unconstitutional or at least may not constitutionally be applied to defendant when engaged in such foreign commerce.

II

The Supreme Court of the State of Michigan erred in its decision and judgment in holding that the aforesaid Michigan "Civil Rights" Act as amended was valid and enforcible as against this defendant when engaged in foreign commerce, in that under Article I, Sec. 8 (3) of the Constitution of the United States, such foreign commerce may not be regulated by the State of Michigan but is solely under the jurisdiction of the Congress of the United States, and the said Supreme Court of Michigan erred in not holding said Act may not constitutionally be applied to defendant when engaged in foreign commerce, or in not holding said act

was invalid under said provision of the Constitution of the United States if so applied.

III

Appellant further states that it intends to rely upon the following portions of the record which it thinks necessary [fol. 101] for consideration in the determination of this case upon appeal:

1. Warrant.
2. Bill of Exceptions.
3. Motion for Entry of Judgment of Not Guilty, *except* paragraphs numbered (1), (4), and (5) thereof.
4. Reasons and Grounds for Appeal (to Supreme Court of Michigan) and Assignments of Error, *except* paragraphs numbered (1), (2), (5), (6), and (9) thereof.
5. Opinion of the Supreme Court of Michigan (North, J.).
6. Judgment of the Supreme Court of Michigan.
7. Application for Rehearing.
8. Order denying Application for Rehearing.
9. Petition for Appeal to Supreme Court of the United States.
10. Order Allowing Appeal to Supreme Court of the United States.
11. Assignment of Errors, *except* paragraphs (3), (4), and (5) thereof.
12. Praecipe of Defendant and Appellant indicating portions of record to be incorporated into transcript thereof to be forwarded Clerk, Supreme Court of the United States.
13. This Statement of Points to be relied upon, and Designation of Parts of Record to be Printed.

Richard E. Cross, Attorney for Defendant & Appellant, 4200 Penobscot Building, Detroit 26, Michigan; Wilson W. Mills, Of Counsel, 1712 Ford Building, Detroit 26, Michigan.

[fol. 102] UNITED STATES OF AMERICA

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM 1947

Number 374

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff and Appellee,

vs.

BOB-LO EXCURSION COMPANY, a Michigan Corporation, Defendant and Appellant

STATE OF MICHIGAN,
County of Wayne, ss:

Vera Broeg being duly sworn deposes and says she is employed by Wilson W. Mills and that on September 30, 1947 she served a true copy of the foregoing "Statement of Points Intended to be Relied upon by Appellant and Parts of Record to be Printed Pursuant to Rule 13, Paragraph 9 Revised Rules of the Supreme Court of the United States," upon Eugene F. Black Attorney General of Michigan, Edmund E. Shepherd, Solicitor General, and Daniel J. O'Hara, Assistant Attorney General, by mailing a true copy thereof in an envelope with the postage thereon fully prepaid and addressed to the said Eugene F. Black (marked for the attention of said Edmund E. Shepherd) and addressed to him at his office to wit: Capitol Building, Lansing (2), Michigan.

Further deponent saith not.

Vera Broeg.

Subscribed and sworn to before me this 30th day of September A. D. 1947. Roy H. Lockwood, Notary Public, Wayne County, Michigan. My comm. expires: Aug. 7, 1950.

[fol. 102a] [File endorsement omitted.]

[fol. 103] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 27, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsed:] File No. 52,604, Michigan Supreme Court, Term No. 374. Bob-Lo Excursion Company, Appellant, vs. The People of the State of Michigan. Filed September 26, 1947. Term No. 374 O. T. 1947.

(3222)